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Parties in Mediation – Some Comments in the Context of the Parties' Readiness for Mediation and the Suitability and Predisposition of the Case for Mediation*

Strony w mediacji – kilka uwag w kontekście gotowości mediacyjnej stron oraz zdolności i predyspozycji mediacyjnej sprawy

ABSTRACT

This study represents an original attempt to clarify the concept of the parties' readiness for mediation and the suitability and predisposition of a case for mediation, in line with the cogent proposal advanced by Andrzej Korybski: to systematise the basic conceptual framework used in the social sciences in research on mediation. Thus, the study provides a synthetic overview of Korybski's approach to readiness for mediation. Subsequently, the author presents several major remarks concerning that approach, centred on the original proposal to expand the understanding of readiness for mediation to encompass the entire mediation process, including the parties' behavioural sphere (in a way that complements and verifies the psychological and organisational spheres). This will enable one to distinguish between the so-called internal (subjective) and external (objective) forms of mediation readiness. Furthermore, the author argues that readiness for mediation should be understood in a broader conceptual context, against the backdrop of related phenomena and concepts (including those of similar scope), particularly those that constitute manifestations of mediation readiness that

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promote or undermine it. Among such concepts (phenomena), the following are specifically considered: good faith in mediation, the suitability of a case for mediation, the predisposition of a case for mediation, and the parties' concerns regarding dispute resolution through mediation.

Keywords: parties' readiness for mediation; internal (subjective) readiness for mediation; external (objective) readiness for mediation; good faith in mediation; suitability of a case for mediation; predisposition of a case for mediation; parties' concerns regarding mediation

INTRODUCTION

This particular inquiry was inspired first by the cogent proposal formulated by Andrzej Korybski (a distinguished expert and pioneer of Polish studies on Alternative Dispute Resolution – ADR), who saw a need for the basic conceptual framework in mediation research to be systematised, so that it may be universally applied by the representatives of various social sciences (including law, psychology and sociology), including – in particular – a more thorough exploration of the concept of mediation readiness and related concepts.¹ Moreover, the matter is addressed because the status, rights, and obligations, as well as the attitudes and behaviours of the parties in mediation, call for broader research, especially since numerous standards, codes of ethics, mediation regulations, and pertinent legal acts focus primarily on the mediator or on the rules governing mediation proceedings.² Additionally, in-depth analyses of the parties' readiness for mediation, notably the principle of voluntariness of mediation as well as the concerns expressed by its parties regarding mediation, seem indispensable in the current social and legal circumstances in Poland, given that as of 1 March 2026, the court will obligatorily

¹ See more: A. Korybski, *Aparat pojęciowy w badaniach nad mediacją (uwagi na marginesie pojęcia gotowości mediacyjnej*, "ADR. Arbitraż i Mediacja" 2025, vol. 18(1), pp. 85–100. On the pioneering research on ADR issues by Korybski, see: *Idem*, *Alternatywne rozstrzyganie sporów w USA – studium teoretycznoprawne*, Lublin 1993.

² See, e.g.: *Standardy prowadzenia mediacji i postępowania mediatora* and *Kodeks Etyczny Mediatorów Polskich uchwalone przez Społeczną Radę ADR przy Ministrze Sprawiedliwości*, <https://www.gov.pl/web/sprawiedliwosc/dokumenty-i-deklaracja-o-stosowaniu-mediacji> [access: 2.01.2026]; *Kodeks Etyki mediatora Polskiego Centrum Mediacji*, <https://mediator.org.pl/baza-wiedzy/kodeks-etyki-mediatora/> [access: 2.01.2026]; *Standardy Polskiego Centrum Mediacji w sprawie prowadzenia mediacji karnych, z nieletnim sprawcą czynu karalnego, rodzinnych, pracowniczych, cywilnych i gospodarczych, rówieśniczych oraz e-mediacji*, <https://mediator.org.pl/baza-wiedzy/standardy-mediacji/> [access: 2.01.2026]; *Regulamin mediacyjny Centrum Mediacji przy Krajowej Izbie Gospodarczej w Warszawie*, <https://kig.pl/uslugi/centrum-mediacji/> [access: 2.01.2026]. As regards the relevant legal regulations, see, e.g.: Articles 183(1)–183(15) of the Act of 17 November 1964 – the Code of Civil Procedure (consolidated text: Journal of Laws of 2024, item 1568) or Articles 96a–96n of the Act of 14 June 1960 – the Code of Administrative Procedure (consolidated text: Journal of Laws of 2025, item 1691).

refer parties to mediation in cases concerning construction contracts and the strictly construction-related contracts for the performance of construction works.³

The aim of this study is to discuss the concept of readiness for mediation as formulated by Korybski and, above all, to propose an original, broader interpretation that spans the entire mediation process and takes into account the parties' behavioural sphere. Another objective is to argue for mediation readiness to be perceived in a broader conceptual context, against the backdrop of identified key phenomena and related concepts. Bearing these goals in mind, the first part concisely outlines the Korybski's approach to mediation readiness. Subsequently, the author presents several major remarks concerning that approach, centred on the original proposal to expand the understanding of readiness for mediation to encompass the entire mediation process, including the parties' behavioural sphere (in a way that complements and verifies the psychological and organisational spheres). This will enable one to distinguish between so-called internal (subjective) and external (objective) mediation readiness. Furthermore, it is argued that readiness for mediation should be viewed in a broader conceptual context, against the backdrop of related phenomena and concepts (including those of similar scope), particularly those that constitute manifestations of mediation readiness that promote or undermine it. Among such concepts (phenomena), the following are specifically considered: good faith in mediation, the suitability of a case for mediation, the predisposition of a case for mediation, and the parties' concerns regarding dispute resolution through mediation. In the conclusion, an attempt is made to identify further significant issues bearing on the readiness for mediation, which requires continued extensive studies, both theoretical, conceptual and empirical.

³ For more information on the parties' concerns about using mediation, see, e.g.: A. Zienkiewicz, *Obawy stron przed rozwiązywaniem sporów poprzez mediację*, [in:] *Mediacje w prawie*, eds. J. Czapska, M. Szelań-Dylewski, Kraków 2014, pp. 29–44. On the subject of mandatory mediation (including in the context of the parties' willingness to cooperate or the mediation predisposition of the case and the parties' concerns about the use of mediation), see, e.g.: M. Artymiak, *Mediacje obligatoryjne a gotowość stron do współdziałania w mediacji. Perspektywa psychologiczna*, [in:] *Mediacje obligatoryjne*, ed. K. Antolak-Szymanski, Warszawa 2017; A. Zienkiewicz, *Mandatory Mediation – Remarks on Determining a Dispute's Suitability for Mediation and the Parties' Concerns Regarding Mediation*, "Studia Iuridica Lublinensia" 2018, vol. 27(3), pp. 61–71. See Article 458(3a) § 1 of the Code of Civil Procedure, which provides: "In cases referred to in Article 458(2) § 1(5), the court shall refer the parties to mediation prior to the pre-trial hearing or the first hearing scheduled as part of the trial."

READINESS FOR MEDIATION AS PROPOSED BY ANDRZEJ KORYBSKI

In an article entitled “The Conceptual Framework in Mediation Research (Remarks on the Concept of Mediation Readiness),” Korybski cogently argued that the essential conceptual framework in mediation research should be systematised to enable its universal application, including effective communication between the representatives of various social sciences (law, psychology, sociology, social communication studies and political science).⁴ The author noted that the current state of research on mediation spans contributions from a number of scholars across various fields of the social sciences and that it is highly diverse in terms of underlying assumptions, methodology, specific research questions and conceptual frameworks.⁵ Korybski underlined that effective communication calls for a baseline terminological framework comprising a set of key terms whose meaning (at least regarding the constitutive features of the phenomena and processes that such terms describe) has been accepted within the diverse community who conduct research on mediation.⁶ In the article, Korybski explored the term “readiness for mediation,” introduced to facilitate “a more detailed analysis of the parties’ psychological readiness to engage in mediation and their readiness to accept the mediation settlement.”⁷ A conceptual analysis of that term was intended to serve as a starting point for formulating the premises of a prospective conceptual framework that would facilitate interdisciplinary research on mediation and mutual communication among the involved scholars within the scientific community.⁸ At the same time, the author drew attention to the need to analyse the concept of mediation readiness in light of related concepts and to expand research on psychological diagnosis and on promoting mediation readiness, particularly in terms of mediators’ competences and responsibilities.⁹

Speaking of the concept of readiness for mediation, Korybski observed as follows:

The understanding of the term “readiness for mediation” which predominates in relevant literature draws on the meaning of “readiness” in many ethnic languages: as a state of preparedness of a given subject for a certain action (set of actions). However, such a state may be analysed in its various aspects, the crucial ones of which – from the standpoint of analysis of the concept of mediation readiness – include organisational preparedness (which is particularly vital in team activities)

⁴ A. Korybski, *Aparat pojęciowy...*, pp. 85–86.

⁵ *Ibidem*.

⁶ *Ibidem*.

⁷ *Ibidem*, p. 89.

⁸ *Ibidem*.

⁹ *Ibidem*, pp. 89–90.

and the psychological readiness of the individuals participating in a given team activity. Of these two aspects, the psychological aspect has gained clear prominence in the literature on mediation readiness to date. The psychological aspect of the parties' preparedness for resolving a dispute through mediation encompasses both the attitude of readiness to enter into mediation and the readiness to accept a settlement decision which concludes the dispute.¹⁰

Regarding mediation readiness from an organisational perspective, the author notes, for instance: "Readiness for mediation may be understood as a state of organisation of the relationships between the parties to the dispute themselves, but also of the relationships between the parties to the dispute and the mediator, and possibly also between the parties to the dispute, the mediator and third parties participating in the mediation, which enables mediation proceedings to be instituted and conducted."¹¹

The readiness for mediation as understood by Korybski, elucidated in the light of relevant literature, may be described primarily as a subject-oriented approach in psychological terms, whereby it is treated as an attitude of (internal/volitional) readiness of the parties to: a) enter into mediation, as well as b) to accept a settlement decision which concludes the dispute.¹² The author places somewhat less emphasis on the organisational aspect of mediation readiness, which may be understood as the preparedness of the parties (as well as the mediator or other participants) to initiate and conduct mediation proceedings.

¹⁰ *Ibidem*, p. 89.

¹¹ *Ibidem*, pp. 90–91.

¹² *Ibidem*, pp. 87–91. Among the relevant literature on the issue of mediation readiness, Korybski refers, among others, to such works as: J. Fuhr, *Mediation Readiness*, "Family Court Review. An Interdisciplinary Journal" 1989, vol. 27(2); J.M. Haynes, *Matching Readiness and Willingness to the Mediator's Strategies*, "Negotiation Journal" 1985, no. 1, pp. 339–354; C.J.A Beck, L.E. Frost, *Defining a Threshold for Client Competence to Participate in Divorce Mediation*, "Psychology, Public Policy, and Law" 2007, vol. 12, pp. 4–32; R. Brinkert, *State of Knowledge: Conflict Coaching Theory, Application, and Research*, "Conflict Resolution Quarterly" 2016, vol. 33, pp. 391–397; G.A. Hullman, M.J. Kwiatkowski, *Social constructions of conflict and mediation as factors in mediation program decisions*, "Conflict Resolution Quarterly" 2021, vol. 39(3), pp. 211–220; J.M. Haynes, G.L. Haynes, L. Sun Fong, *Mediation: Positive Conflict Management*, New York 2004, passim; M. Condell, *Capacity to Mediate and the Human Right to Self-Determination: the Mediator's Responsibility!*, "The Journal of Mediation and Applied Conflict Analysis" 2015, vol. 2(1), pp. 211–220; I.W. Zartman, *Mediation Roles for Large Small Countries*, "Canadian Foreign Policy Journal" 2013, vol. 19(1), pp. 13–25 – see footnotes no. 3, 4, 5, 8 contained in the article: A. Korybski, *Aparat pojęciowy...*, pp. 87–88, 90.

PROPOSAL FOR A BROADER UNDERSTANDING OF READINESS FOR MEDIATION

While the understanding of readiness for mediation according to Korybski thoroughly deserves to be recognised, it might be worthwhile for the concept (phenomenon) at hand to be applied more broadly, at least to the entire mediation process in the strict sense (meaning the full course of the mediation itself, starting with the pre-mediation agreement to enter into mediation and the final conclusion of a mediation settlement). Moreover, it would be advisable to take into account the parties' behavioural spheres, enabling a distinction between so-called internal (subjective) and external (objective) readiness for mediation.¹³

In mediation practice, an adequate degree of readiness for mediation among the parties to the dispute (diagnosed and supported by appropriately selected strategies and techniques employed by the mediator) is a desirable factor for its success (effectiveness). Ideally, that readiness should extend over the entire process, i.e. the pre-mediation phase, the mediation itself and the post-mediation stage, rather than being in evidence merely (or primarily) at the moment of its commencement and the conclusion of a settlement.¹⁴ Therefore, it seems important to recognise and highlight that, within a broader understanding of the concept (phenomenon) of the parties' readiness for mediation, one must also distinguish the behavioural sphere which complements and verifies the aforementioned psychological and organisational components. This is due to the fact that specific attitudes and behaviours of the parties in mediation corroborate and reify their declared intentions, thus, verifying not only their true intentions or desires, but also the level of organisational preparedness and the ability to engage in mediation discourse, including constructive and peaceful communication, formulating options for an amicable resolution of the dispute, the scope of concessions, and the content of an agreement based on the win-win solution paradigm.

The proposed broader understanding of the concept (phenomenon) of readiness for mediation, encompassing the psychological, organisational and behavioural

¹³ For more information on the author's understanding and model stages of mediation proceedings (pre-mediation, mediation in the strict sense, post-mediation), in the context of other concepts presented in the world literature, see: A. Zienkiewicz, *Studium mediacji. Od teorii ku praktyce*, Warszawa 2007, pp. 123–137. Cf. A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2014, pp. 48–54.

¹⁴ For more information on empirical research concerning, among others, mediator activity that contributes to the parties' readiness for mediation (including mediation strategies and techniques and its effectiveness), see, e.g.: A. Zienkiewicz, *Objectives of Mediation and selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part II – Survey Questionnaires)*, "Studia Iuridica Lublinensia" 2022, no. 1, pp. 213–236; idem, *Objectives of Mediation and Selection and Implementation of Mediation Strategies and Techniques by Mediators in Civil Disputes – Study Report (Part III – Interviews)*, "Studia Iuridica Lublinensia" 2023, no. 2, pp. 303–332.

spheres, enables one to distinguish between so-called internal (subjective) and external (objective) mediation readiness. Internal (subjective) readiness for mediation derives directly from the parties' psychological sphere, encompassing categories such as their mental state, attitudes, will, desires, intentions, motives, or internal resolution/commitment to a specific action. This is often observed at the initial stage (and may be sustained, reinforced or diminished during the mediation process), since readiness for mediation is not a static phenomenon but a dynamic state that may be developed and nurtured during mediation. Typically, a party's attitude towards genuine participation in mediation, in accordance with its objectives and principles, may be rated as very willing, willing, accepting, sceptical or reluctant.¹⁵ At the same time, the notion of internal (subjective) mediation readiness could encompass a dimension of the organisational sphere, assessed as early as the pre-mediation stage and reflecting the parties' preparedness for mediation in terms of competence and knowledge. The latter would be expressed in the parties' sufficient ability to comprehend the objectives and principles of mediation, peaceful communication, and the conduct of integrative negotiations with a view to reaching an agreement.

In contrast, external (objective) readiness for mediation would concern the behavioural sphere, linked to manifestations of internal mediation readiness, expressed through specific attitudes and behaviours of the parties with respect to the objectives and principles of mediation, assessed at all individual stages of the mediation process (pre-mediation, mediation proper and post-mediation).¹⁶

It should be noted at this point that the proposed distinction between the internal (subjective) and external (objective) readiness corresponds to the more general civil-law concept of good and bad faith, as well as the principle of good and bad faith in mediation, which may also be approached from a specific psychological, organisational and behavioural perspectives.¹⁷

¹⁵ See empirical research on the willingness of Polish judges and entrepreneurs to use mediation – W. Broński, M. Dąbrowski, P. Sławicki, M. Wiechetek, *Readiness to Use Mediation – Judges' and Entrepreneurs' Perspective*, "Utrecht Law Review" 2024, vol. 20(4), pp. 20–33.

¹⁶ Mediation readiness should be characterized by, among other things, acceptance and implementation of the goals of mediation and its principles (e.g. the principles of voluntariness, impartiality, neutrality, confidentiality, conflict autonomy, respect, openness to dialogue and compromise or the search for mutually acceptable and beneficial solutions to the dispute) – for more information on the various goals of mediation (including the personal, interpersonal, social, psychological, communication, negotiation and information dimensions) and the principles of mediation standards – see, e.g.: A. Zienkiewicz, *Studium mediacji...*, pp. 96–123, 137–150, idem, *Standardy prowadzenia mediacji i postępowania mediatora – uchwalone przez Społeczną Radę ADR przy Ministrze Sprawiedliwości*, "Studia Prawnoustrojowe" 2012, no. 18, pp. 185–200.

¹⁷ See more: M. Stryniak-Puza, A. Zienkiewicz, *Uczestnictwo w złej wierze w próbie dobrowolnego rozwiązania sporu gospodarczego przed wytoczeniem powództwa*, "ADR. Arbitraż i Mediacja" 2023, vol. 16(1), pp. 115–132.

In the subjective sense, good faith is an intellectual fact construed as a mental state, whereby a party is justifiably ignorant of the existence of certain legal circumstances. In particular, such a party may hold the erroneous conviction that they are entitled to a specific right or that a particular legal relationship exists.¹⁸ Conversely, seen from an objective standpoint and classified as a general clause, it refers to indeterminate categories such as the principles of social coexistence, equity, good mores, integrity and reliability in transactions.¹⁹ Bad faith is the opposite of good faith; it is not the absence thereof, but precludes the existence of good faith once ascertained. The concept of bad faith presupposes dishonest intent or some other impermissible motive on the part of a party and involves conduct that deviates from accepted principles of ethical behaviour or fair practices in commercial transactions.²⁰ Simultaneously, it is a heterogeneous concept, contingent on the specific institution of substantive law in which it occurs.

Good faith is a fundamental principle in the mediation process; it applies to the parties, the mediator and other participants alike; it is a key factor at every stage of mediation and remains indispensable if the parties are to reach an agreement at all. Bearing in mind that mediation is a method of dispute resolution, it may be assumed that the applicable principles often take the form of a method as well. Hence, “good faith in mediation should be assessed as a method of action ‘with the intention of reaching an agreement.’ Nonetheless, the concept of good faith does not in itself encompass the outcome of the agreement, but only the method that leads to it.”²¹

Manifestations of good faith in mediation will include, in particular: respect for all participants in the process; flexibility and a willingness to find solutions; openness to opponents’ arguments; and clarifying, explaining or dispelling the other party’s doubts. Negotiations in good faith are a process where parties discuss and agree on terms in an honest, open and fair manner, with the intention of reaching an agreement that is beneficial to all involved (the so-called “win-win solution” paradigm). This process involves thorough commitment and willingness to understand the other party’s viewpoints and interests, striving to arrive at a solution that takes the needs of either party into account, and avoiding actions that could

¹⁸ T. Sokołowski, *Komentarz do art. 7 k.c.*, [in:] *Kodeks cywilny. Komentarz*, t. 1: *Część Ogólna*, ed. A. Kidyba, 2012, electronic version Lex, pt 1.

¹⁹ J. Gajda, *Dobra wiara w znaczeniu obiektywnym na gruncie unormowań Kodeksu rodzinnego i opiekuńczego*, Toruń 2020, pp. 64–66.

²⁰ See, e.g.: J. Adamczyk, *Zgłoszenie znaku towarowego w złej wierze*, Warszawa 2023, electronic version Lex, Ch. I, pt 2–6.

²¹ M. Kożuch, *Dobra wiara w procesie mediowania. Czy udział prawnika zmienia percepcję dobrej wiary?*, [in:] *Oblicza mediacji. Wybrane zagadnienia*, eds. K. Wojtanowicz, M. Pękala, Kraków 2021, p. 71.

undermine trust or mislead (especially in a deliberate manner, which could constitute an example of acting in bad faith or negotiating in breach of good practice).²²

The above understanding of the related concepts, particularly a party's participation in mediation in good faith, may warrant the conclusion that it constitutes a manifestation of their readiness for mediation in the subjective sense and is synonymous with or broadly coincides with mediation readiness in the objective sense, associated with the behavioural sphere as expressed by specific attitudes and behaviours of the parties in relation to the objectives and principles of mediation.

SUITABILITY AND PREDISPOSITION OF THE CASE FOR MEDIATION AND THE PARTIES' CONCERNS REGARDING MEDIATION

The proposed broader understanding of readiness for mediation, encompassing the psychological, organisational and behavioural spheres, as well as enabling the distinction between internal (subjective) and external (objective) mediation readiness, should, in line with Korybski's argument, be set against a broader conceptual framework, including key related phenomena and concepts (including those with a similar scope), which represent manifestations of readiness for mediation (such as the previously underlined participation of the parties in mediation in accordance with the principle of good faith) and which may promote or undermine it. Among such concepts (phenomena), particular attention should be paid to the suitability and predisposition of a case for mediation, as well as the parties' concerns about resolving disputes through mediation.

Although the parties may be ready for mediation, the dispute may not be suitable for mediation, as the case lacks the necessary elements. The concept of suitability for mediation has not been statutorily defined; it is most commonly associated with the possibility of reaching a settlement through mediation proceedings. It is therefore linked to the amenability of the dispute to settlement, whereby the parties to a legal relationship have the capacity to independently decide on the rights and claims arising from such a relationship, both in litigation and non-litigation proceedings. In civil cases in which settlement is legally admissible, one may conduct mediation proceedings and reach a settlement that, in principle, applies to claims arising under, e.g. property law, inheritance law, labour law, commercial law or family law. The subject matter of a settlement may pertain to various civil law relationships arising from contracts, torts or unjust enrichment. However, under Polish civil law, a settlement concluded before a mediator may not concern, for instance,

²² Cf. M. Stryniak-Puza, A. Zienkiewicz, *Uczestnictwo w zlej...*, p. 125. See also examples of bad faith in mediation presented in the above-mentioned article on p. 127.

the deprivation, restriction, suspension and restoration of parental authority; the determination of a child's parentage; matters concerning the existence and validity of a marriage; decisions on divorce or separation; cases concerning a declaration of death or the confirmation of death; cases concerning incapacitation, the confirmation of inheritance, and cases heard in summary or writ proceedings, unless objections have been successfully raised, or cases relating to social security.²³

Even so, suitability for mediation need not always be equated with the criterion of amenability to settlement (though both are linked) or with the possibility of replacing court proceedings with mediation proceedings in their entirety (it suffices to do so only as a supplementary measure or in particular stages). It should be noted that not every mediation proceeding must end in a settlement, as this is not the exclusive aim of mediation (which often strives to identify and resolve the causes of the dispute, improve communication and relations between the parties, or establish a basis for future cooperation), but in principle, such a possibility should be legally admissible.²⁴ It is also advisable that the suitability of a case for mediation be assessed using at least a two-fold criterion, which examines both the nature of the dispute and its normative context (the objective aspect), as well as the capacity of the parties to participate and the validity of their participation in an attempt to resolve it amicably through mediation (the subjective aspect). An incorrect assessment of whether a case is suited for mediation in subjective terms, particularly in cases involving violence, addiction, mental health issues or a significant imbalance of power, carries a serious risk of negative consequences for a party (e.g. through secondary victimisation or the exacerbation of health conditions). Given that many factors that adversely affect suitability for mediation are hidden, the mediators may be required to conduct an in-depth assessment, notably in difficult cases.

The parties' readiness for mediation should be considered and properly distinguished from the case's predisposition for mediation (within which it may constitute one of the key criteria for its examination and verification). Forming a precise definition of the so-called suitability for mediation of every case is definitely not easy or could even constitute an impossible task with the current lack of infallible tools or diagnostic methodology. Even more so, considering the multitude and the individual character of its possible aspects, dispute dynamics or the diverse, and often unpredictable impact of outside factors. Nevertheless, it still seems justified to make an attempt at identifying what qualities predispose a dispute to be resolved with an agreement reached through integrative negotiations in the presence of

²³ See, e.g.: Article 477(12) of the Code of Civil Procedure.

²⁴ As Rafał Morek points out: "It is difficult to determine precisely in which cases a settlement may be reached" – see: R. Morek, *Arbitraż i mediacja*, Warszawa 2006, p. 90.

a mediator.²⁵ While analyzing a dispute with regard to its potential for amicable conciliation (not only through mediation), it is worth determining and evaluating such of its legal and non-legal aspects as, e.g. the significance for each party of maintaining positive relations vs. the material (including economic) result of the case;²⁶ mutual relations of the parties in the past and presently; the level of conflict escalation; the level of toxicity in the communication between the parties; the predicted duration of the relations and the need for cooperation between the parties in the future; the level and nature of interdependence; the level of complication (ambiguity or precedence) of the judicial context of the case; each party's amount of evidence; the level of uncertainty about the court's decision; time pressure; each party's hierarchy of values, interests and needs; each party's personality type including inclination towards conciliation, cooperation and compromise; the way of looking at the disputed issue (personal preferences regarding the relevant categories like power, right, interest, needs or the loss-profit style of decision making);²⁷ hidden motives behind the parties' attitudes and behaviors.²⁸

In an attempt to present and classify the parties' main concerns regarding resolving disputes through mediation, which are often unsubstantiated and stem from the lack of adequate knowledge, based on the author's practical experience and research, we can point to three basic groups of concerns: a) concerns regarding mediation proceedings, b) concerns regarding the mediator, c) concerns regarding one's own or the opposing party.²⁹

The concerns regarding mediation proceedings include in particular: concerns about the agreement being unfavorable for one of the parties (lack of equity/

²⁵ At this point, one should mention two useful questionnaires designed to help determine whether mediation is suitable for the parties involved in a given dispute. The questionnaires were developed by members of the Polish section of the European Association of Judges for Mediation "Gemme." The first, entitled "Assessment of Cases for Mediation for Judges," consists of 14 questions to which the judge is to respond based on their experience, intuition and what they have deduced from reading the case files and data available in electronic systems. The second questionnaire, intended for the parties to the dispute, comprises 20 questions and is accompanied by a key that explains the issues addressed therein. The questionnaires cover various aspects of the dispute, both objective (including procedural, cost-related and evidentiary matters) and subjective (including psychological aspects, concerns of the parties and their relationships), see: <https://polska.gemmeeurope.org/wzory-dokumentow> [access: 27.02.2026].

²⁶ On the subject of how an individual reacts to conflict depending on the degree of importance for each party of maintaining mutually positive relations versus the substantive outcome of the matter – see, e.g.: A. Kalisz, A. Zienkiewicz, *Mediacja sądowa...*, pp. 20–21.

²⁷ On the issue of the so-called framing of a dispute and the types of framing encountered during negotiations, see: A. Kalisz, A. Zienkiewicz, *Polubowne rozwiązywanie konfliktów w pomocy społecznej. Komunikacja, psychologia konfliktów, negocjacje i mediacje socjalne*, Sosnowiec 2015, pp. 94–97.

²⁸ A. Zienkiewicz, *Mandatory Mediation...*, pp. 63–64.

²⁹ For more information on the various concerns of the parties regarding resolving disputes through mediation and ways to overcome them, see: A. Zienkiewicz, *Obawy stron...*, pp. 29–44.

appropriateness); concerns about a failure to establish the truth through mediation proceedings (lack of evidence-based proceedings); concerns about inefficiency/unenforceability (including illegality) of the agreement; concerns about the statute of limitations while mediation is in progress; concerns about the disclosure of the mediation agreement; concerns about the lack of appropriate equality (rights) protection throughout proceedings; concerns about the length of mediation proceedings; concerns about an inability to use legal counsel, specialist knowledge or a legal representative's participation in mediation proceedings; concerns about the hidden costs of mediation; concerns about the inability to litigate in case mediation fails. The concerns regarding the mediator include in particular: concerns about the mediator's incompetence; concerns about the mediator's partiality; concerns about the mediator's attitude being ill-suited to the preferences/expectations of the parties (the requirement of optimally adjusting strategy and mediation techniques to the particular dispute); concerns about the mediator disclosing the content of the mediation proceedings to the social environment; concerns about the mediator's lack of civil liability insurance. The concerns regarding one's own (personal) or the opposing party tend to be particularly concentrated on: concerns about the opposing party invoking in court the settlement proposals, proposed mutual concessions or other declarations made throughout mediation; concerns about the parties' lack of knowledge about mediation procedures or law in general and concerns about the parties' lack of real impact on the course and result of mediation.³⁰

At this point it must be emphasized that the majority of the above-mentioned concerns leading to the parties not using mediation, especially the ones resulting from the lack of adequate knowledge of the nature mediation proceeding and the role and duties of the mediator, can be effectively eliminated as early as the preliminary inquiry on the subject of mediation initiated by the court, at a meeting with competent legal counsel or during pre-mediation.³¹

Conversely, failure to address the parties' significant concerns regarding mediation or its selected elements may significantly weaken or utterly undermine the parties' readiness for mediation (already at the primary psychological level).

CONCLUSIONS

In summary, this study, in line with the stated research goal, discusses Korybski's concept of readiness for mediation. Subsequently, the author has outlined an original proposal to broaden understanding of mediation readiness, applying it to the entire mediation process and taking into account the parties' behavioural sphere

³⁰ Idem, *Mandatory Mediation...*, pp. 64–65.

³¹ Cf. *ibidem*, p. 65.

(which complements and verifies the psychological and organisational spheres). Such an approach allows distinguishing between so-called internal (subjective) and external (objective) readiness for mediation. Furthermore, it has been proposed to view mediation readiness within a broader conceptual context, against the backdrop of related phenomena and concepts (including those similar in scope), which constitute, in particular, manifestations of readiness for mediation that promote or undermine it. Among these concepts (phenomena), the following were specifically considered: good faith in mediation, the suitability of a case for mediation, the predisposition of a case for mediation, and the category of parties' concerns regarding dispute resolution through mediation.

To conclude, it may be worthwhile to highlight additional significant issues related to mediation readiness, which should be explored through in-depth theoretical, conceptual and empirical research.

The proposed understanding of readiness for mediation should encourage further studies into the scope, methods, techniques and tools for assessing the psychological, organisational and behavioural spheres of the parties' readiness for mediation, including identification of specific characteristics and determination of the degree of mediation readiness of the mediator and other participants in mediation (e.g. representatives of the parties).

It is also important to ascertain and analyse various external and internal factors that affect the degree (stages) of readiness for mediation among the parties, the mediator and other participants. In particular, one cannot overlook the relationship between the parties' readiness for mediation and the social environment of the conflict, as well as the impact of this environment on the propensity of society's members to pursue amicable dispute resolution, notably through mediation.

Research should also address the obligations and rights of the parties regarding their declared readiness for mediation, including their obligations to enter into and participate in it in good faith.

Another matter of equal significance is whether the mediator has the competence to assess and reinforce the parties' readiness for mediation, while upholding, in particular, the principles of voluntariness, impartiality and neutrality, as well as the principles of party self-determination and acceptability. This is also approached in the context of various normative solutions concerning mandatory mediation.

Finally, readiness for mediation should be properly distinguished and examined with respect to such phenomena or categories such as the suitability and predisposition of a case for mediation, as well as in terms of contraindications for referring a dispute to mediation.

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ABSTRAKT

W artykule podjęto autorską próbę przybliżenia rozumienia pojęcia gotowości mediacyjnej stron mediacji oraz zdatności i predyspozycji mediacyjnej sprawy, w ślad za słusznym postulatem Andrzeja Korybskiego dotyczącym uporządkowania podstawowego aparatu pojęciowego wykorzystywanego w naukach społecznych w badaniach nad mediacją. W ramach podjętych rozważań w pierwszej kolejności w syntetyczny sposób zaprezentowano ujęcie gotowości mediacyjnej zaproponowane przez Korybskiego. Następnie zostały przedstawione główne refleksje dotyczące rzeczoności ujęcia, skoncentrowane wokół autorskiej propozycji poszerzenia rozumienia gotowości mediacyjnej, odnoszonego do całego postępowania mediacyjnego, uwzględniającego również sferę behawioralną stron (dopełniając i weryfikując sferę psychiczną i sferę organizacyjną), pozwalającego na wyróżnienie tzw. gotowości mediacyjnej wewnętrznej (subiektywnej) oraz zewnętrznej (obiektywnej). Ponadto w tekście sformułowano propozycję postrzegania gotowości mediacyjnej w szerszym kontekście

pojęciowym – na tle zjawisk pokrewnych (w tym zbliżonych zakresowo), które stanowią jej przejawy albo wpływają na jej wzmocnienie bądź osłabienie. Wśród tych pojęć (zjawisk) w szczególności uwzględniono: dobrą wiarę w mediacji, zdolność medacyjną sprawy, predyspozycję medacyjną sprawy oraz obawy stron przed rozwiązywaniem sporów poprzez mediację.

Słowa kluczowe: gotowość medacyjna stron; gotowość medacyjna wewnętrzna (subiektywna); gotowość medacyjna zewnętrzna (obiektywna); dobra wiara w mediacji; zdolność medacyjną sprawy; predyspozycja medacyjna sprawy; obawy stron przed stosowaniem mediacji